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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/787,334	02/26/2004	Jason P. Adams	2456.2.14	3985
28049 7590 07/18/2008 PATE PIERCE & BAIRD 175 SOUTH MAIN STREET, SUITE 1250 SALT LAKE CITY, UT 84111				
EXAMINER STULIL, VERA				
ART UNIT		PAPER NUMBER		
1794				
MAIL DATE		DELIVERY MODE		
07/18/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/787,334

**Applicant(s)**

ADAMS, JASON P.

**Examiner**

VERA STULII

**Art Unit**

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 May 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6, 8, 9, 12-14, 16-22, 47-53, 55-59 and 62-64 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 7, 10-11, 15, 23-46, 54, 60-61 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on May 19, 2008 has been entered.

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

**Claims 1-6, 8-9, 12-14, 16-22, 47-53, 55-59 and 62-64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee Jae Hack (KR20010069765) in view of Ruihai et al (CN 1336424).**

In regard to claims 1, 47, 49 and 62, Hack discloses a liquid beverage directly ingestible by user (beer) (Abstract).

In regard to claims 1, 5-6, 47, 50 and 54, Hack discloses active ingredients present in the beverage such as vitamins A, B<sub>1</sub>, B<sub>2</sub>, B<sub>6</sub>, C, D, E and calcium (Abstract).

In regard to claims 1, 12, 13 and 47, Hack discloses antioxidant (vitamin C) as a "chemical excipients" (Abstract). It is noted that Vitamin C was known to function as a highly effective antioxidant.

In regard to claim 2, Hack discloses commercially available traditional alcoholic drink (beer) (Abstract).

In regard to claims 3, 4, 14 and 49, Hack discloses beer (Abstract).

In regard to claim 8, 53, 57 and 58, Hack discloses calcium (Abstract).

In regard to claims 21-22, Hack discloses beer containing vitamins and calcium (Abstract).

In regard to claims 16-20, Hack discloses beer containing vitamins and calcium (Abstract). Hack also discloses providing "nutrients that are usually deficient in the human body" (Abstract). On page 6 of specification Applicant recites that "[n]utritional deficiency may result from numerous mechanisms and may include, (1) ingestion of foods and beverages that are themselves nutritionally deficient; (2) ingestion of foods and beverages that may deplete nutrient stores in the body; (3) ingestion of foods and beverages that may interfere with the absorption of nutrients in the gastrointestinal system; and (4) co-morbidity with diseases, disorders, or conditions that may deplete nutrient stores in the body. Alcohol, especially chronic, excessive intake of alcoholic beverages, may cause nutritional deficiency through any or all of the above listed mechanisms." Combining alcohol with vitamins, antioxidant and mineral, leads to replenishing a deficiency of selected nutrients, inhibiting the depletion effects of the beverage on nutrients, reversing the depletion effects of the beverage on nutrients, neutralizing depletion effects of the beverage on nutrients, etc. Regarding specific amounts nutritional ingredients and claim 48, Hack disclose 500 mg of calcium, 150 µg

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of vitamin A, 1 mg of vitamin E, 0.3 mg of vitamin B<sub>1</sub>, 0.4 mg of vitamin B<sub>2</sub>, 0.65 mg of vitamin B<sub>6</sub>, 1.25 µg of vitamin D, 20 mg of vitamin C.

Hack does not disclose vitamin B<sub>9</sub> as an active ingredient in claims 1 and 62, magnesium in claim 47, zinc, iron or selenium in claims 50-52 and 56-58.

Ruihai et al disclose beer formulation containing nutrients "capable of benefiting life and antisenility" (Abstract). Ruihai et al disclose addition to beer a proper quantity of folic acid (vitamin B<sub>9</sub>), selenium, zinc, chromium, manganese, B12, glutathione, B<sub>6</sub>, magnesium, rutin, etc (Abstract).

Since Hack discloses addition of active ingredients such as vitamins (vitamins A, B<sub>1</sub>, B<sub>2</sub>, B<sub>6</sub>, C, D, E) and minerals (calcium) to provide consumer with nutrients that are "usually deficient in human bodies", and Ruihai et al disclose addition to beer a proper quantity of folic acid (vitamin B<sub>9</sub>), selenium, zinc, chromium, manganese, B12, glutathione, B<sub>6</sub>, magnesium and rutin, etc beer formulation containing nutrients "capable of benefiting life and anti senility", one of ordinary skill in the art would have been motivated to modify disclosure of Hack et al and to add other vitamins and minerals that are deficient in the human body. One of ordinary skill in the art would have been motivated to add minerals and vitamins as recited, since folate, magnesium, selenium and zinc were well known vitamin and mineral supplements. One of ordinary skill in the art would also have been motivated to do so in order to increase dietary value of the beer.

Regarding specific amounts of nutrients and minerals in claims 16-20, 48, 59, 62 and 64, since Hack teaches beer containing vitamins and minerals "to provide people

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with nutrients which are usually deficient in human bodies", one of ordinary skill in the art would have been motivated to modify specific amounts of nutrients and minerals based on the individual serving amount, age, weight and physiological conditions of the consumer.

Regarding wine recitation in claim 55, since Hack discloses nutritionally enriched traditional alcoholic beverage such as a beer, one of ordinary skill in the art would have been motivated to modify Hack and to substitute beer with wine. One of ordinary skill in the art would have been motivated to do so, since both wine and beer were well known nutritionally depleted alcoholic beverages.

**Claims 1-6, 8-9, 12-14, 16-22, 47-53, 55-59 and 62-64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Donhowe (US 2003/0134007) in view of Ruihai et al (CN 1336424).**

In regard to claims 1, 47, 49, 55 and 62, Donhowe discloses a liquid beverage directly ingestible by user (malt beverages, beer, wine or distilled alcoholic beverages) (Abstract).

In regard to claims 1, 5-6, 8, 47, 50-53, 56-59 and 62, Donhowe discloses active ingredients present in the beverage such as protein, amino acids, minerals (iron, calcium, zinc and selenium), vitamins (Vitamin A, Vitamin E, Vitamin C, Vitamin B1, Vitamin B2, Vitamin B6, and Vitamin B12) [0017].

In regard to claims 1, 12, 13 and 47, Donhowe discloses antioxidants (Vitamin C, Vitamin E and selenium), sweeteners, preservatives (sodium benzoate) and food

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coloring [0017], buffering agents such as citric acid, tartaric acid, malic acid, succinic acid, ascorbic acid, phosphoric acid, potassium phosphate and/or sodium phosphate [Claim 10].

In regard to claims 2, Donhowe discloses commercially available traditional drink (malt beverages, beer, wine or distilled alcoholic beverages) (Abstract).

In regard to claims 3, 4 and 14, Donhowe discloses malt beverages, beer, wine or distilled alcoholic beverages) (Abstract).

In regard to claims 16-20, Donhowe discloses alcoholic beverage containing vitamins and minerals (Abstract). Donhowe also discloses providing alcohol-containing beverage that enhanced nutrition in comparison to existing alcoholic beverages. (Abstract). On page 6 of specification Applicant recites that "[n]utritional deficiency may result from numerous mechanisms and may include, (1) ingestion of foods and beverages that are themselves nutritionally deficient; (2) ingestion of foods and beverages that may deplete nutrient stores in the body; (3) ingestion of foods and beverages that may interfere with the absorption of nutrients in the gastrointestinal system; and (4) co-morbidity with diseases, disorders, or conditions that may deplete nutrient stores in the body. Alcohol, especially chronic, excessive intake of alcoholic beverages, may cause nutritional deficiency through any or all of the above listed mechanisms." Combining alcohol with vitamins, antioxidants, minerals, proteins and amino acids leads to replenishing a deficiency of selected nutrients, inhibiting the depletion effects of the beverage on nutrients, reversing the depletion effects of the beverage on nutrients, neutralizing depletion effects of the beverage on nutrients, etc.

In regard to claims 21-22, Donhowe discloses malt beverages, beer, wine or distilled alcoholic beverages containing fructose, corn syrup, sucrose, honey, glucose, sucralose, aspartame, stevia (claim 8), calcium, zinc and iron (claim 14), whey, casein, soy protein, rice protein, albumin, hydrolyzed protein (claim 1).

Regarding specific amounts nutritional ingredients and claim 48, Donhowe discloses 10% to 100% of the U.S. Recommended Daily Value of vitamins (Vitamin A, Vitamin E, Vitamin C, Vitamin B1, Vitamin B2, Vitamin B6, and Vitamin B12) [0017].

Donhowe does not disclose vitamin B9 as an active ingredient in claims 1, 47 and 62, magnesium in claims 47, 59, 63 and 64.

Ruihai et al disclose beer formulation containing nutrients "capable of benefiting life and anti senility" (Abstract). Ruihai et al disclose addition to beer a proper quantity of folic acid (vitamin B9), selenium, zinc, chromium, manganese, B12, glutathione, B6, magnesium, rutin, etc (Abstract).

Since Donhowe discloses addition of active ingredients such as vitamins Vitamin A, Vitamin E, Vitamin C, Vitamin B1, Vitamin B2, Vitamin B6, and Vitamin B12 and minerals (iron, calcium, zinc and selenium) to provide consumer with nutritionally beneficial supplements [0014], and Ruihai et al disclose addition to beer a proper quantity of folic acid (vitamin B9), selenium, zinc, chromium, manganese, B12, glutathione, B6, magnesium and rutin, etc beer formulation containing nutrients "capable of benefiting life and anti senility", one of ordinary skill in the art would have been motivated to modify disclosure of Donhowe et al and to add other vitamins and minerals that are also nutritionally beneficial. One of ordinary skill in the art would have



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been motivated to add minerals and vitamins as recited, since folate and magnesium were well known vitamin and mineral supplements. One of ordinary skill in the art would also have been motivated to do so in order to increase dietary value of the beverage.

Regarding specific amounts of nutrients and minerals in claims 16-20, 48, 59, 62 and 64, since Donhowe teaches alcohol containing beverages with vitamins and minerals to produce the beverage that has enhanced nutrition in comparison with existing alcoholic beverages, one of ordinary skill in the art would have been motivated to modify specific amounts of nutrients and minerals based on the individual serving amount, age, weight and physiological conditions of the consumer.

**Claim 55 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lee Jae Hack (KR20010069765) in view of Ruihai et al (CN 1336424) and further in view of Donhowe (US 2003/0134007).**

Hack, Ruihai et al and Donhowe are taken as cited above.

Hack and Ruihai do not disclose wine as an alcoholic beverage. In regard to claims 1, 47, 49, 55 and 62, Donhowe discloses a liquid beverage directly ingestible by user (malt beverages, beer, wine or distilled alcoholic beverages) (Abstract).

In regard to claims 1, 5-6, 8, 47, 50-53, 56-59 and 62, Donhowe discloses active ingredients present in the beverage such as protein, amino acids, minerals (iron, calcium, zinc and selenium), vitamins (Vitamin A, Vitamin E, Vitamin C, Vitamin B1, Vitamin B2, Vitamin B6, and Vitamin B12) [0017].

Since Hack, Ruihai et al and Donhowe disclose nutritionally enriched alcoholic beverages, one of ordinary skill in the art would have been motivated to modify Hack

and to substitute beer with wine. One of ordinary skill in the art would have been motivated to do so, since both wine and beer were well known nutritionally depleted alcoholic beverages.

### ***Response to Arguments***

The rejections of claims under 35 U.S.C. 102(b) and 102 (a) have been withdrawn due to the claims' amendments submitted 05/19/2008.

Applicant's arguments with respect to claims 1-6, 8-9, 12-14, 16-22, 47-53, 55-59 and 62-64 regarding rejections of claims under 35 U.S.C. 103(a) have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VERA STULII whose telephone number is (571)272-3221. The examiner can normally be reached on 7:00 am-3:30 pm, Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

VS

/KEITH D. HENDRICKS/  
Supervisory Patent Examiner, Art Unit 1794